

# FLORIDA'S DEPENDENCY BENCHBOOK

## BENCHCARD: JUDICIAL REVIEW

Items in **bold font** are required by Florida Statutes.

### Introductory remarks.

- Explain purpose of the hearing. State the number of days the child has been in care and the number of placements to date.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Section 8*)

### Representation and appointment of counsel.

- **If parents do not have counsel, advise parents of right to legal counsel. § 39.701(2)(c)(2). This offer of counsel must be renewed at every hearing. § 39.013(9).**
- **Ascertain whether the right to counsel is understood. § 39.013(9)(a).**
- If counsel is waived, waiver must be on the record. Rule 8.320(b)(2). **Determine if waiver is made knowingly, intelligently, and voluntarily. § 39.013(9)(a).**
- If parents request counsel and claim to be indigent, have parents fill out affidavit for indigency. **If indigent per affidavit and parents request it, appoint counsel for parents. § 39.013(9)(a).**
- If parents are ineligible for the appointment of counsel or knowingly, intelligently, and voluntarily waive appointed counsel, ask if the parents want to proceed pro se or hire a private attorney. Explain “pro se” if necessary.
- Verify whether parents were notified of right to counsel at each stage of the dependency proceeding.
- **If parents request a continuance to consult with counsel, if the child is in shelter care, the court must follow the requirements of § 39.402(14) in determining whether to grant the continuance. (*See Continuances, Section 8*)**
- Follow the circuit plan (developed by the chief judge) so that orders appointing counsel are entered on an expedited basis.

### Parties and notices.

- **Have all parties identify themselves for the record and verify that the court has the parents' current addresses. § 39.0131. See also §§ 39.402(8)(g) & 39.506(4).** Notify the parents that the address they provide will be used by the

court and DCF to provide them with notice of all court hearings and orders. (Note: Do not openly identify the address when one or more of the parents is party to an injunction for protection against domestic violence.)

- If child, parents, caregivers, or relatives who requested notice are absent, confirm that they were properly noticed. Rule 8.305(b)(1); §§ 39.301(14)(b), 39.402(5)(a), 39.402(8)(h)(9), 39.502(19). The Fostering Connections Act requires DCF to use due diligence to identify and notify all relatives within 30 days of removal. Verify that DCF used due diligence to notify all relatives within 30 days of removal. If parent is absent and has not been served, inquire about the diligent search. (*See Fostering Connections Act and Service, Section 7*)
- If child, parents, legal custodians, caregivers, or relatives who requested notice are absent, confirm that they were properly noticed. If parent is absent and has not been served, inquire about the diligent search. §§ 39.402(5)(a) & 39.502(1). (*See Service, Section 8*)
- Make findings on the record of whether each caregiver did or did not receive actual notice of the hearing; whether each caregiver is present, either in person or remotely; and, if possible, the reasons why any caregivers are not present.
- Provide each caregiver a meaningful opportunity to be heard and provide input to the court and to address the court with any information relevant to the best interests of the child. § 39.502(17) & 39.701(2)(b)3.
- For all relatives who requested notification pursuant to § 39.301(14)(b), inquire whether each such relative has a report to submit to the court or desires to speak to the court regarding the child. § 39.502(19).
- Make findings regarding indigency and appointment or waiver of counsel. § 39.013(9).
- Make findings of whether any relatives who requested notice pursuant to § 39.301(14)(b) submitted a report to the court or spoke to the court regarding the child.
- Make a written determination of whether each caregiver did or did not receive actual notice of the hearing; whether each caregiver appeared at the hearing, either in person or remotely; and whether each caregiver had a meaningful opportunity to be heard.
- Conduct a paternity inquiry if still in dispute. If a parent has not legally established paternity, DNA testing should be ordered after proper inquiry, applying *Privette* principles as appropriate. If necessary, examine birth certificate or inquire as to marriage status. (*See Paternity in Dependency Cases, Section 3*)

- **Appoint Guardian ad Litem Program to represent the best interests of the child if it has not yet been appointed. § 39.402(8)(c); Rule 8.215. (See *Guardian ad Litem*, Section 4)**
- **If the child is eligible for membership in a federally recognized tribe, confirm that DCF/CBC notified the tribe pursuant to the Indian Child Welfare Act. (See *Indian Child Welfare Act*, Section 7)**
- **Ask the parents if they are involved in any other past or pending family law, paternity, domestic violence, delinquency or child support cases other than those previously disclosed. (See *Dependency in the Context of Unified Family Court*, Section 2)**
- **Verify timely compliance with all ICPC requirements. (See *Interstate Compact on the Placement of Children*, Section 7)**

Review judicial review social study report and other reports.

- **The case worker's report and the GAL's report must be served at least 72 hours before the hearing on all parties whose whereabouts are known, including to the caregivers or legal custodians and to any citizen review panel. § 39.701(2)(b)(1). (See *Guardian ad Litem*, Section 4)**
- **Review report of agency if child has been permanently placed with DCF and citizen review panel report, if any.**
- **If citizen review panel recommends the goal of reunification be extended beyond 12 months from the date the child was removed, the case plan was adopted, or the child was adjudicated dependent, whichever date came first, the court must schedule a judicial review within 30 days of receipt of such recommendations. § 39.701(1)(d)(2).**
- **If the child has a master trust, ask the case worker to provide a quarterly master trust accounting in the judicial review social study report. See § 39.701(3)(a)3. (See *Master Trusts*, Section 8)**
- **If the child was assessed for placement in a safe house pursuant to § 409.1754(1), the results of that assessment, the multidisciplinary staffing described in § 409.1754(2), and the actions taken as a result of the assessment must be included in the disposition hearing or next judicial review of the child. At each subsequent judicial review, the court must be advised in writing of the status of the child's placement, with special reference regarding the stability of the placement, any specialized services, and the permanency planning for the child. § 39.524(2).**

- Verify that the case worker has provided notice of the child's right to request a fee waiver with every judicial review.
- Ask the case worker if all necessary internal staffings have been held ongoing and particularly prior to making a recommendation of reunification, TPR, or another permanency option.
- Ensure that the staffings include relevant family members, custodians, GALs, attorneys, treatment providers, and tribal services staff (if applicable).

Review other evidence presented.

- Consider information in oral and written reports. § 39.701(2)(c).
- The child has a right to be heard at all review hearings. DCF shall provide written verification that the child has a statement encouraging the child to attend all judicial review hearings occurring after his or her 17th birthday. § 39.701(3)(a)(14). (*See Children in Court, Section 4*)

Determine case plan compliance of parents.

- If parents are not a party to the case plan, determine the basis for unwillingness or inability to participate. Also, determine whether DCF's efforts to secure participation were sufficient. § 39.701(2)(c)(11).
- Determine whether parents were advised of the right to counsel and to receive assistance in preparation of case plan. §§ 39.701(2)(c)(1), 39.701(2)(c)(2).
- Review the suitability of the child's permanency goal as identified in the case plan.
- Determine whether parents have complied with child support order. § 39.701(2)(c)(5). If not, enforce. (*See Child Support in Dependency Cases, Section 3*)
- Determine compliance with family time (visitation). § 39.701(2)(c)(6). Include frequency, duration, results of visitation, and reason for any noncompliance. (*See Family Time Protocols, Section 4*)
- Determine compliance with specified financial obligations relating to care of the child, including reasons for any noncompliance. § 39.701(2)(c)(8). (*See Child Support in Dependency Cases, Section 3*)
- Determine whether to amend the terms of the case plan. § 39.6013.
- If the court finds that the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and

not in the best interests of the child, it may authorize the filing of a TPR petition before the time period in the case plan for substantial compliance has expired. § 39.701(2)(d)(4).

- If the court determines that reunification is not a viable alternative, and prior to the filing of the petition for termination of parental rights, it shall advise the parents of the availability of private placement of the child with an adoption entity as defined in § 63.032. §§ 39.802(4)(d) & 63.082(6)(g); Rule 8.255(i).
- Determine if the case plan accurately reflects the needs of the family. (*See Service and Treatment Considerations for Children and Parents, Section 5*)

Determine case plan compliance of DCF and others.

Note: There are special considerations when conducting a judicial review for youth transitioning to adulthood. See next benchcard titled “Special Considerations when Conducting Judicial Review Hearings for Youth Transitioning to Adulthood.”

Review the child’s placement.

- Determine if safety is still an issue. Consider reunification when the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child’s remaining with or being returned to the child’s parent. (*See American Bar Association Safety Guide, Section 6*)
- Ask what changes, if any, have been made to the child’s living arrangement and/or placement since the last hearing. If there has been a change, ask if the change is necessary to achieve the child’s permanency goal or meet the child’s service needs. (*See Placement Stability Considerations, Section 4*)
- Determine if the setting is as family-like and close to the parent’s home as possible and consistent with the child’s best interests. § 39.701(2)(c)(9).
- Review/Update the availability of relative placements for the child, including out-of-state relatives and parents of previously adopted siblings. Advise the parent that the he or she has a continuing duty to inform DCF of any relative who should be considered for placement of the child. § 39.402(17).
- One purpose of Chapter 39 is to make every possible effort, if two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated while under the care of the department or in a permanent placement, to keep them in contact with each other. § 39.001(1)(k).

- Inquire of the child, caregiver, GAL, and case worker of any issues with the current placement.
- Ask if the case worker is regularly visiting the home (including visits alone with the child).
- Verify that the caregiver is willing and able to meet the needs of the child.
- If siblings are not placed together, determine why not, and ask about efforts made (when appropriate) to keep them together. Ensure continuing contact between siblings (when appropriate) when they are not placed together.
- **Determine the frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the child. § 39.701(2)(c)(7); Rule 8.415(f)(1).**
- Order DCF and CBC to file a written notification before the child changes placement, when possible. If it is impossible to provide notification before a placement change, DCF and the CBC should file notification promptly following the change. The court should verify that the GAL is involved with the placement decision. (*See Placement Stability Considerations, Section 4*)
- Determine if concurrent planning is appropriate based on the facts of the case. If adoption is a permanency option, verify that adoption homestudies have been completed. Also verify that the CBC has produced necessary adoption documents. (*See Concurrent Case Planning Model, Section 4*)
- If the case involves domestic violence, ensure adequate safety provisions exist, the placement is appropriate to protect the child, and safety plan compliance. (*See Domestic Violence and the Effects on Children, Section 3*)
- Require placement of pregnant teens in a foster home that will also accept the baby.

Address the needs of the child.

- Verify that the child's mental, physical, and dental health care needs have been addressed. Get input from all parties/participants, including the child and caregiver. (*See Health Considerations, Section 5*)
- Verify that the parents are participating in the medical and educational appointments. (*See Family Time Protocols and Co-Parenting, Section 4*)
- Verify that the child is attending school on a regular basis and has adequate transportation. (*See Educational Considerations, Section 5*)

- Review appropriate school records, including any Individualized Education Plan (IEP). If an educational surrogate parent has been appointed, have the surrogate parent report to the court.
- Determine who holds the right to make educational decisions.
- Verify that the child is attending the same school as when he/she first entered care. If not, ask what has been done to ease the transition.
- Ask the child if there are any other individuals who should be present at this hearing or future hearings.
- Appoint an attorney to represent the child with special needs as required by Rule 8.231, and who is not already represented by an attorney. Rule 8.415(f)(5).
- **Before his or her 19th birthday, inquire if the child wishes to petition the court to continue the court's jurisdiction. The court may retain jurisdiction for up to a year following the youth's 18th birthday. § 39.013(2)(c).**

Review family time (visitation). (See *Family Time Protocols, Section 4*)

- Reassess the type, frequency, duration, and quality of family time (visitation). At a minimum, several hours a week of visitation is needed for the purposes of bonding. Get input from all parties/participants including child and caregiver.
- Verify that the visitation is consistent to meet the developmental, emotional, and mental needs of the child.
- Inquire if transportation has been an issue and determine who has been present and participated in the visits.
- Ensure that there is ongoing supporting documentation regarding the frequency, quality, and progress of the visitation.
- **If siblings are unable to be placed together, verify sibling visitation is occurring.**  
**§ 39.4085(15). DCF must make reasonable efforts to provide frequent sibling visitation, even with previously adopted siblings.**
- **Determine the frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the child. § 39.701(2)(c)(7); Rule 8.415(f)(1).**
- If visitation is not possible because of the distance of the parent, the court should specify what alternative forms of contact are permitted (such as phone, email, webcam, or video conferencing).

- If the case involves domestic violence, ensure visitation practices are adequate to protect the child. (*See Domestic Violence and the Effects on Children, Section 3*)

If child is not returned to a parent, consider whether TPR petition should be filed.

Set the next hearing.

- Consider holding more frequent judicial reviews if very young children are involved or if the family has complex problems such as substance abuse, mental health issues, and domestic violence.
- When setting non-TPR hearings, be cognizant of counsels' TPR hearings that are scheduled before other judges and defer to those TPR hearings.
- Provide written notices of the next hearing at the conclusion of every hearing and make sure that parties not present at the hearing are noticed.
- **Enforce caregivers' rights to address the court. § 39.701(2)(b)(3).**
- **Order the Children's Legal Services attorneys to provide notice to caregivers of the next court hearing if caregivers are not in court. § 39.502(19). See also §§ 39.301(14)(b) & 39.502(17). For a relative who submits a request for notification of all proceedings and hearings pursuant to § 39.301(14)(b), the notice shall include the date, time, and location of the next judicial review hearing. § 39.701(1)(g).**
- Set a TPR advisory hearing no later than 60 days after the permanency review hearing.
- Consider setting aside specific docket times for the TPR advisory hearing, pretrial status conference, and TPR trial.
- Ask if the child had difficulty attending the hearing. Facilitate telephonic or video conferencing if necessary. (*See Children in Court, Section 4*)

Complete a written order.

## JUDICIAL REVIEW SUPPLEMENT

During the judicial reviews, judges should conduct a thorough review of whether or not the child can return home and examine safety issues. It should also be determined if the case plan needs to be revised. If the case is complex, the judge should decide if more frequent reviews need to be held. Prior to the judicial review, the case worker should staff the case with all service providers, the caregiver, the parent, and the child.

➤ **Representation and appointment of counsel.**

What do I need to do with regard to representation and/or appointment of counsel? See section in shelter hearing supplement titled, “Representation and appointment of counsel.”

What should I do after swearing in the parties? The court shall advise parents of the right to counsel, ascertain whether the right to counsel is understood, and appoint counsel for parents who qualify as indigent. §§ 39.013(9); 39.013(9)(a).

➤ **Parties and notices.**

What should I know about identifying parties and ensuring proper notice was accomplished? See “Parties and notices” sections of the shelter hearing benchcard and supplement.

Determine whether parties were properly served.

As to any identified absent parent, determine whether a diligent search was completed by DCF. (*See Service, Section 8*)

Hearings are required every 6 months until the child reaches permanency status, § 39.701(1)(c)(1), as well as within 90 days after a child’s 17th birthday. § 39.701(3)(a).

- All parties must be present, except for the child, unless a hearing is held before a citizen review panel prior to the judicial review. § 39.701(1)(c)(1).
- If the child is placed in the custody of DCF or a licensed child-placing agency for adoption, judicial reviews must be held at least every 6 months until the adoption is finalized. § 39.701(1)(d)(3).
- DCF may conduct administrative reviews in addition to judicial reviews at least every 6 months for children in out-of-home care. An administrative review may not be substituted for the first judicial review, and in every case the court must conduct a judicial review at least every 6 months. All parties must

receive notice of administrative reviews and any party dissatisfied with the results may petition for a judicial review. § 39.701(1)(d)(4).

- In addition to other hearing requirements, the court shall hold a judicial review hearing within 90 days after a child's 17th birthday and shall continue to hold timely judicial review hearings. In addition, the court may review the status of the child more frequently during the year prior to the child's 18th birthday if necessary. § 39.701(3)(a).
- The department must update the child's transition plan before each judicial review hearing as required by law. Rule 8.415(b)(3).
- The court must approve the child's transition plan before the child's 18<sup>th</sup> birthday. Rule 8.415(b)(3).

Should DCF notify the court when placement changes occur between judicial review hearings? Yes. The court must be notified of certain placement changes if they occur between judicial review hearings. When a child has been voluntarily placed, DCF must notify the court of such placement within 5 working days. This notification is not required when a child will be in out-of-home care no longer than 30 days, unless that child is placed in out-of-home care a second time within a 12-month period. § 39.701(1)(d)(6).

May I issue a protective order that sets forth requirements relating to reasonable conditions of behavior by a person or agency before the court? Yes. The court may issue a protective order to assist with or as a condition of an order. The protective order may set forth requirements relating to reasonable conditions of behavior by a person or agency before the court, including a requirement that such person or agency to make periodic reports to the court. § 39.701(2)(d)(6).

Are some minors exempt from judicial review? Yes. Judicial reviews are not required for:

- Minors who have been placed in adoptive homes by a licensed child-placing agency; or
- Minors who are refugees or entrants to whom federal regulations apply and who are in the care of DCF. § 39.704.

What if the child qualifies for the appointment of a guardian advocate or a limited or plenary guardian? At the judicial review hearing, if the court determines pursuant to chapter 744 that there is a good faith basis to believe that the child qualifies for appointment of a guardian advocate, limited guardian, or plenary guardian for the child and that no less restrictive decision-making assistance will meet the child's needs:

- The department shall complete a multidisciplinary report which must include, but is not limited to, a psychosocial evaluation and educational report if such a report has not been completed within the previous 2 years;
- The department shall identify one or more individuals who are willing to serve as the guardian advocate pursuant to § 393.12 or a plenary or limited guardian pursuant to chapter 744. Any other interested parties or participants may make efforts to identify such a guardian advocate, limited guardian, or plenary guardian. The child's biological or adoptive family members, including the child's parents if the parents' rights have not been terminated, may not be considered for services as the plenary or limited guardian unless the court enters a written order finding that such an appointment is in the child's best interests.
- Proceedings may be initiated within 180 days after the child's 17<sup>th</sup> birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744. The Legislature encourages the use of *pro bono* representation to initiate proceedings. § 39.701(3)(b)2.

Are there specific requirements regarding that separate proceeding? Yes. Section 39.701(3)(b)3-4 require that:

- In the event another interested party or participant initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child, the department shall provide all necessary documentation and information to the petitioner to complete a petition under § 393.12 or chapter 744 within 45 days after the first judicial review hearing after the child's 17<sup>th</sup> birthday;
- Any proceedings seeking the appointment of a guardian advocate pursuant or a determination of incapacity and the appointment of a guardian must be conducted in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744. § 39.701(3)(b)3-4.

➤ **Review judicial review social study report and other reports.**

DCF must furnish to the court a written report based on an investigation and social study concerning all pertinent details relating to the child.

What must DCF's report include? The report must include the following:

- The type of placement the child is in, including safety of the child and the continuing necessity for and appropriateness of the placement. § 39.701(2)(a)(1).

- Documentation of diligent efforts made by parties to comply with the case plan.  
§ 39.701(2)(a)(2).
- The amount of fees assessed and collected during the period of time being reported.  
§ 39.701(2)(a)(3).
- Services provided to the foster family or legal custodian to address the needs of the child as indicated in the case plan. § 39.701(2)(a)(4).
- A statement that either:
  - The parent, though able to do so, did not comply substantially with the case plan, and agency recommendations;
  - The parent did substantially comply with the case plan; or
  - The parent has partially complied with the case plan, with a summary of additional progress needed and agency recommendations. § 39.701(2)(a)(5).
- A statement from the foster parent or legal custodian providing any material evidence concerning the return of the child to a parent. § 39.701(2)(a)(6).
- The frequency, duration, and results of any parent-child visitation and recommendations for expansion or restriction of future visitation. § 39.701(2)(a)(7).
- The number of times a child has been removed and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.  
§ 39.701(2)(a)(8).
- The number of times a child's educational placement has been changed, educational placements which have occurred, and the reason for any change in placement.  
§ 39.701(2)(a)(9).
- If the child has reached 13 years of age but not yet 18 years of age, a statement from the caregiver on the progress the child has made in acquiring independent living skills.  
§ 39.701(2)(a)(10).
- Copies of all medical, psychological, and educational records concerning the child, parents, or any caregiver since the last judicial review hearing. § 39.701(2)(a)(11).
- Copies of the child's current health, mental health, and education records identified in § 39.6012. § 39.701(2)(a)(12).
- Facts showing the court to have jurisdiction. Rule 8.415(c).
- Identity and residence of parent and legal custodian. Rule 8.415(c).
- Dates of dependency adjudication and reviews. Rule 8.415(c).

- The results of any safe-harbor placement assessment including the status of the child's placement. Rule 8.415(c).
- Requests for the following:
  - That the child's placement be changed;
  - That the case plan be continued for the parents or DCF to complete assigned tasks;
  - That TPR proceedings be instituted; OR
  - That the child has a special need as defined in § 39.01305 who is not represented by an attorney, and who requires the appointment of an attorney. See Rule 8.415(c).

Furthermore, in addition to any information or report provided to the court, DCF shall include in its judicial review social study report written verification that the child has:

- A current Medicaid card and has been provided all necessary information concerning the Medicaid program sufficient to prepare the youth to apply for coverage upon reaching age 18, if such application would be appropriate. § 39.701(3)(a)(1).
- A certified copy of his or her birth certificate and, if the child does not have a valid driver's license, a Florida identification card issued under § 322.051. § 39.701(3)(a)(2).
- A social security card and information relating to social security insurance benefits if the child is eligible for such benefits. If the child has received these benefits and they are being held in trust for the child, a full accounting of those funds shall be provided and the child must be informed about how to access those funds. § 39.701(3)(a)(3). (*See Master Trust, Section 8*)
- All relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, information on participation, and assistance in gaining admission to the program. If the child is eligible for the Road-to-Independence Program, he or she must be advised that he or she may continue to reside with the licensed foster family or group care provider with whom the child was residing at the time of the child attained his or her 18th birthday, in another licensed family home, or with a group care provider arranged by DCF. § 39.701(3)(a)(4).
- An open bank account, or has identification necessary to open such an account, and has been provided with essential banking skills. § 39.701(3)(a)(5).
- Information on public assistance and how to apply. § 39.701(3)(a)(6).
- A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in. § 39.701(3)(a)(7).

- Information related to the ability to remain in care until he or she reaches 21 years of age under § 39.013. § 39.701(3)(a)(8).
- A letter providing the dates that the child is under the jurisdiction of the court. § 39.701(3)(a)(9).
- A letter stating that the child is in compliance with financial aid documentation requirements. § 39.701(3)(a)(10).
- The child's educational records. § 39.701(3)(a)(11).
- The child's entire health and mental health records. § 39.701(3)(a)(12).
- The process for accessing his or her case file. § 39.701(3)(a)(13).
- A statement encouraging the child to attend all judicial review hearings occurring after the child's 17th birthday. § 39.701(3)(a)(14).
- Information on how to obtain a driver license or learner's driver license. § 39.701(3)(a)(15).

At the first judicial review held subsequent to the child's 17th birthday, in addition to other requirements, DCF shall provide the court with an updated case plan that includes specific information related to independent living services that have been provided since the child's 13th birthday, or since the date the child came into foster care, whichever came later. § 39.701(3)(b).

What may I do if DCF has not met its obligations? If the court finds at the judicial review hearing that the department has not met its obligations to the child as stated in the written case plan or in the provision of independent living services, the court may issue an order directing the department to show cause as to why it has not done so. If the department cannot justify its noncompliance, the court may give the department 30 days within which to comply. If the department fails to comply within 30 days, the court may hold the department in contempt. § 39.701(3)(c).

What should I require of DCF if the child has been permanently placed with DCF?  
If child has been permanently placed with DCF:

- DCF shall furnish to the court a written report concerning the progress being made to place the child for adoption.
- If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements must be submitted to the court.
- The report must be submitted to the court at least 72 hours before the review hearing. § 39.701(2)(b)(2).

Should I review a report filed as a result of a citizen review panel?

Yes, citizen review panels may conduct hearings to review the status of a child.

- The court shall refer appropriate cases to the panels and may order the attendance of the parties at the hearings.
- Any party may object to the referral, and the court must review the substance of the objection and determine whether to conduct the review itself or refer the review to a review panel.
- All parties may take exception to the findings or recommended orders of a review panel pursuant to Rule 1.490(h). § 39.701(2)(b).

At the end of the hearing, parties may propose a recommended order. The review panel submits its report, copies of the proposed recommended orders, and a copy of the panel's recommended order to the court. § 39.701(2)(c).

Citizen review panels cannot conduct more than two consecutive reviews without the child and the parties coming before the court for a judicial review. § 39.701(1)(d)(1).

➤ **Review other evidence presented.**

What happens if a child is born into a family that is under the court's jurisdiction or a child moves into a home that is under the court's jurisdiction? The department is required to assess the child's safety and provide notice to the court. § 39.701(1)(h).

Is the department required to do anything besides provide notice to the court?

Yes. The department is required to complete an assessment to determine how the addition of a child will impact the family functioning. The assessment must be completed at least 30 days before a child is expected to be born or to move into a home, or within 72 hours after the department learns of the pregnancy or addition if the child is expected to be born or to move into the home in less than 30 days. The assessment shall be filed with the court. § 39.701(1)(h)1.

What else must the department file? Once a child is born into a family or a child moves into the home, the department shall complete a progress update and file it with the court. § 39.701(1)(h)2.

Can the court review the update? Yes. The court has discretion to hold a hearing on the progress update. § 39.701(1)(h)3.

Must I allow foster parents, legal custodians, and pre-adoptive parents to address the court? Yes. § 39.701(2)(b)(3).

They may provide any information relevant to the best interests of the child and may do so in addition to any written statement provided to the court.

In addition to considering oral and written reports, the court must take into consideration the following information:

- The social services study and investigation;
- Medical, psychological, and educational records;
- Testimony by DCF, the parent, the foster parent or legal custodian, the guardian ad litem, and any other person deemed appropriate; and
- Any relevant and material evidence submitted to the court, to the extent of its probative value.

Should I receive an update from DCF on the child's medical and behavioral status?

Yes.

§ 39.407(3)(f)(1). DCF shall fully inform the court of the child's medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom

The court must retain jurisdiction over a child returned to his or her parents for at least 6 months following reunification. After 6 months, the court must decide whether DCF's supervision and the court's jurisdiction should continue or be terminated. This decision is based on:

- A report of DCF,
- A report of the GAL, if appointed, and
- Other relevant factors. § 39.701(1)(b).

psychotropic medication has been prescribed or provided under

§ 39.407(3). As part of the information provided to the court, DCF shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem, attorney, or attorney ad litem who has been appointed to represent the child or the child's interests, the court may review the status more frequently than required. § 39.407(3)(f)(1).

➤ **Determine case plan compliance of parents. § 39.701(2)(c)(5).**

For a child who has reached 13 years of age but is not yet 18 years of age, determine the adequacy of the child's preparation for adulthood and independent living. § 39.701(2)(c)(12).

For a child who is 15 years of age or older, determine if appropriate steps are being taken for the child to obtain a driver license or learner's driver license. § 39.701(2)(c)(12).

Should the court return the child to the parents if they have substantially complied with the case plan and reunification will not be detrimental to the child's

safety, well-being, and physical, mental, and emotional health? Yes. § 39.701(2)(d)(2).

Determine whether an amendment to the case plan is required. Amendments must be made under § 39.6013.

- Within 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If the court makes written findings that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, DCF must file with the court and serve on all parties, a motion to amend the case plan under § 39.6013 and declare that it will use concurrent planning for the case plan. DCF must file the motion within 10 business days after receiving the written finding of the court. DCF must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts DCF is taking to complete the concurrent goal. § 39.701(2)(d)(5).
- **If the court determines that reunification is not a viable alternative, and prior to the filing of the petition for termination of parental rights, it shall advise the parents of the availability of private placement of the child with an adoption entity as defined in § 63.032. §§ 39.802(4)(d) & 63.082(6)(g); Rule 8.255(i).**

➤ **Determine case plan compliance of DCF and others. § 39.701(2)(c)(5).**

What may I do if, in the opinion of the court, DCF has not met its obligations under the case plan? The court:

- May find DCF in contempt;
- Shall order DCF to submit plans for compliance with the case plan; and
- Shall require DCF to show why the child could not safely be returned to the home of the parents. § 39.701(2)(d)(3).

➤ **Review the child's placement.**

Review whether the child is receiving safe and proper care according to § 39.6012, including but not limited to the appropriateness of the child's placement, including whether the child is in a setting which is:

- As family-like and as close to the parent's home as possible;
- Consistent with the child's best interests and special needs; and

- Maintaining stability in the child's educational placement. § 39.701(2)(c)(9).

Determine a projected date for the child's return home or other permanent placement.

§ 39.701(2)(c)(10).

Determine whether DCF must:

- Initiate proceedings to have a child declared a dependent child;
- Return the child to the parent;
- Continue the child in out-of-home care for a specified period of time; or
- Initiate TPR proceedings. § 39.701(2)(d)(1).

What must I do if I find that the child can remain safely at home or be safely returned to the home with prevention or reunification efforts of DCF? The court shall allow the child to remain in or return to the home. The court must make a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered. § 39.701(2)(d)(1).

What should I do if the child is in residential treatment? Review the need for the child's continued placement in the facility. § 39.407(6)(g)(3).

Should I appoint an attorney for a child in residential treatment or who is being considered for placement in a residential treatment center? Yes. § 39.01305(3)(d). *(See Attorneys for Dependent Children with Certain Special Needs, Section 8)*

What must I do if a non-relative placement continues for longer than 12 months? A non-relative placement must be for a specific and predetermined period of time, not to exceed 12 months, and shall be reviewed by the court at least every 6 months. If the non-relative placement continues for longer than 12 months, DCF shall request the court to establish permanent guardianship or require that the non-relative seek licensure as a foster care provider within 30 days after the court decision. Failure to establish permanent guardianship or obtain licensure does not require the court to change a child's placement unless it is in the best interest of the child to do so. § 39.401(5).

➤ **Review family time (visitation).**

Visits should occur in the most natural, least restrictive setting that can ensure the safety and well-being of the child.

What must DCF do if at the 12-month judicial review hearing the child is not returned to the custody of the parents? DCF shall file a petition to terminate parental rights within 60 days if the child is not returned to the physical

custody of the parents 12 months after the child was sheltered or adjudicated dependent, whichever occurs first. § 39.8055(1)(a).

➤ **Requirements to file TPR petition.**

DCF is required to file a TPR petition within 60 days of any of the following:

- If the child is not returned to the physical custody of the parents 12 months after the child was sheltered or adjudicated dependent, whichever occurs first, § 39.8055(1)(a); or
- If the child has been in out-of-home care under the responsibility of the state for 12 of the most recent 22 months, calculated on a cumulative basis, but not including any trial home visits or time during which the child was a runaway, § 39.8055(1)(b); or
- If a parent has been convicted of the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent, or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or to another child of the parent, § 39.8055(1)(c); or
- If the court determines that reasonable efforts to reunify the child and parent are not required. § 39.8055(1)(d).

May DCF choose not to file a TPR petition? Yes. Notwithstanding § 39.8055(1), DCF may choose not to file or join a TPR petition if:

- The child is being cared for by a relative under § 39.6231, § 39.8055(2)(a); or
- DCF has documented in the report to the court a compelling reason for determining that filing such a petition is not in the best interests of the child. Compelling reasons for not filing or joining a TPR petition include, but are not limited to:
  - Adoption is not the appropriate permanency goal for the child, § 39.8055(2)(b)(1); or
  - No grounds to file the TPR petition exist, § 39.8055(2)(b)(2);
  - The child is an unaccompanied refugee minor as defined in 45 C.F.R. 400.111, § 39.8055(2)(b)(3);
  - There are international legal obligations or compelling foreign-policy reasons that would preclude terminating parental rights, § 39.8055(2)(b)(4); or
  - DCF has not provided to the family, consistent with the time period in the case plan, services that it deems necessary for the safe return of the child to the home, § 39.8055(2)(b)(5).

Upon good cause shown by any party or on its own motion, the court may review the decision by DCF that compelling reasons exist for not filing or joining a TPR petition.

§ 39.8055(3).

➤ **Set the next hearing.**

The court shall schedule the date, time, and location of the next judicial review during the judicial review hearing and shall list same in the judicial review order.

§ 39.701(1)(e).

Notice of a judicial review hearing/citizen review panel hearing, along with a copy of the motion for judicial review, must be served by the clerk on all of the following:

- The social service agency;
- The foster parent or legal custodian in whose home the child resides;
- The parents;
- The guardian ad litem or the Guardian ad Litem Program representative;
- The attorney for the child;
- The child, if the child is 13 years of age or older;
- Any pre-adoptive parent; and
- Such other persons as the court may direct. §§ 39.701(1)(f)(1)-(8).

Service of notice and the motion for judicial review on those listed above is made regardless of whether the person was present at the previous hearing at which the date, time, and location of the hearing was announced. § 39.701(1)(f).

➤ **Requirements for written order.**

- Include findings regarding indigency and appointment or waiver of counsel. § 39.013(9)(a).
- Include findings of whether any relatives who requested notice pursuant to § 39.301(14)(b) submitted a report to the court or spoke to the court regarding the child.
- Make a written determination of whether each caregiver did or did not receive actual notice of the hearing; whether each caregiver appeared at the hearing, either in person or remotely; and whether each caregiver had a meaningful opportunity to be heard, to provide input to the court, and to address the court with any information relevant to the best interests of the child. § 39.502(17) & 39.701(2)(b)3.

- Include written determination as to whether the child should be returned to the parent, continued in out-of-home care, or whether DCF should file a TPR petition.
- As to any identified absent parent, include written determination as to whether the parent was properly served or that a diligent search was completed by DCF.
- Confirm that parties were notified of the hearing.
- Include findings regarding the likelihood of the child's reunification with the parent within 12 months after the removal. § 39.701(2)(d)(5).
- Ensure that the order clearly sets forth each specific date on which the judicial review hearing was held.
- Specify all visitation details.
- Cite the specific provisions of § 39.0136 when granting continuances.
- Include date, time, and location of next judicial review. § 39.701(1)(e).